



February 23, 1999

Mr. John T. Patterson  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 78773-0001

OR99-0527

Dear Mr. Patterson:

You ask this office to reconsider our ruling in Open Records Letter No. 98-2711 (1998). Your request for reconsideration was assigned ID# 122234.

The City of Waco (the “city”) received a request for all records pertaining to the employment of a certain individual. In Open Records Letter No. 98-2711, this office concluded that the city could not withhold the requested information under section 552.103 of the Government Code because the city had failed to timely request a ruling from this office. You assert that the city’s request for a decision was timely submitted, and ask that we consider the merits of your original argument for withholding the requested information under section 552.103.

Initially, we note that the city’s envelope bears a metered mail sticker that shows a date of November 2, 1998. In your request for reconsideration, you state that the city mailed its request for a decision on October 28, 1998, and you call our attention to the markings on the envelope which indicate the date of October 28, 1998. Despite the conflicting postmarks, we find that the additional explanation you have provided constitutes satisfactory proof that your request for a decision was deposited in the mail within the statutory time period. *See* Gov’t Code § 552.308. Thus, we will consider the merits of your original argument against disclosure.

Section 552.103(a) excepts from disclosure information relating to litigation to which the governing body is or may be a party. You contend that the records at issue are excepted from public disclosure pursuant to section 552.103 because the records directly relate to a discrimination complaint filed against the city.<sup>1</sup> You have submitted a copy of the complaint


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<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

for our review. This office has previously held that a pending complaint before the Equal Employment Opportunity Commission (the "EEOC") indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 281 (1981). Given the circumstances that you have shown, we find that the city has met the first prong of the section 552.103(a) test. We also conclude that the requested information is related to the anticipated litigation for the purposes of section 552.103(a). Therefore, assuming that the litigation is still active, we conclude that the city may withhold the requested information under section 552.103.<sup>2</sup> However, if the litigation has concluded, the requested information not excepted from disclosure under section 552.103(a), and it must be disclosed. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) (concluding that the applicability of section 552.103(a) ends once the litigation has been concluded).

In so ruling, we assume that none of the information in the records at issue has either been obtained from or provided to the opposing party in the litigation. Generally, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982).

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 122234

Enclosures: Submitted documents

cc: Mr. James L. Lilly, Jr.  
4417 Normandy  
Dallas, Texas 75205  
(w/o enclosed)

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<sup>2</sup>We note that the EEOC complaint was filed in 1997 and the city has provided no explanation as the current status of this complaint.